FOREST PRACTICES BOARD
Regular Board Meeting
November 10, 2015
Natural Resources Building, Room 172
Olympia, Washington

Members Present
Stephen Bernath, Chair, Department of Natural Resources
Bill Little, Timber Products Union Representative
Bob Guenther, General Public Member/Small Forest Landowner
Brent Davies, General Public Member
Court Stanley, General Public Member
Dave Herrera, General Public Member (participated 9 a.m. – 3 p.m.)
Heather Ballash, Designee for Director, Department of Commerce (participated by telephone)
Joe Stohr, Designee for Director, Department of Fish and Wildlife
Patrick Capper, Designee for Director, Department of Agriculture
Tom Laurie, Designee for Director, Department of Ecology
Paula Swedeen, General Public Member

Members Absent
Carmen Smith, General Public Member/Independent Logging Contractor
Dave Somers, Snohomish County Commissioner

Staff
Marc Engel, Forest Practices Acting Division Manager
Jim Heuring, Forest Practices Acting Assistant Division Manager
Patricia Anderson, Rules Coordinator
Phil Ferester, Senior Counsel

WELCOME AND INTRODUCTIONS
Stephen Bernath called the Forest Practices Board (FPB or Board) meeting to order at 9:05 a.m. Introductions of Board and staff were made.

EXECUTIVE SESSION
The Board convened executive session from 9:10 a.m. – 10:00 a.m.

APPROVAL OF MINUTES
MOTION: Tom Laurie moved the Forest Practices Board approve the August 11 and October 27, 2015 meeting minutes.

SECONDED: Bob Guenther

Board Discussion:
Brent Davies noted that the August meeting minutes did not reflect her request to Adrian Miller for a Type N update in which he had agreed to do so.

ACTION: Motion passed unanimously.

REPORT FROM CHAIR
Stephen Bernath provided an update on the following:

- 2015 Wildfire Season
- 2016 Budget Proposals
- Forest Practices Division staffing changes
- U.S. Fish and Wildlife Service's concerns on water typing

PUBLIC COMMENT
Marc Gautier, Upper Columbia United Tribes, said he appreciated the field tour but thought it was lacking the participation of the other members from ID teams. He suggested the Board hear from the other members used on ID teams to help further the Board's discussion. He also commented on the Type F/N break, off-channel habitat field site, the use of electrofishing, and timing of protocols surveys.

Ken Miller, Washington Farm Forestry Association (WFFA), shared his perspective as a small landowner on the water typing field tour. He said it is a complex process for small landowners and by retaining oversized fish buffers even further upstream would negatively impact small landowners on an economic viability standpoint.

Chris Mendoza, Conservation Caucus, spoke on the August Board motion regarding Board Manual Section 16, specifically the document he submitted highlighting use of emphases language not incorporated in the Board Manual. He acknowledged some language was retained; however, he still disagrees with staff recommendations on the use of emphases language throughout the Board Manual based on being too prescriptive or rule like. He indicated other Board Manual sections include "should" rather than "may", and encouraged the Board to review those sections.

Holly Koon asked the Board to not approve Board Manual Section 16 as written. She presented LiDAR images of the North Zender timber sale illustrating the units in the middle of a deep-seated landslide. She also indicated that the Forest Practices Application (FPA) did not account for any impacts from potential landslides. She urged the Board to use up-to-date science and choose human safety as the priority outcome when amending Board Manual Section 16.

Wyatt Golding, Washington Forest Law Center (WFLC), spoke on the North Zender timber sale as the representative of the landowners, specifically about the FPA approval and the importance of what LiDAR can reveal. He also expressed the reasonable fear that people have living in that area. He asked the Board to think about living below the slope and the level of regulatory precaution they would want if that was their family.

Peter Goldman, WFLC, urged the Board to direct the Adaptive Management Program and DNR to address reforming the inadequate rules, guidelines, screening, and enforcement policies governing forest practices conducted on potentially steep and unstable slopes. He said the forest practice regulatory system, which is supposed to be based on science and sound public policy is failing public safety.

Elaine Oneil, WFFA, provided an update on their continued work in developing an Eastside riparian template proposal. She said they hope to present it to the Board at their February 2016 meeting.

Mary Scurlock, Conservation Caucus, said they appreciated the Board taking time to discuss stream typing and related issues on October 27th. She suggested as these issues develop, the Board should have a presentation that depicts a wider range of example sites. She also shared their concern that Board Manual Section 13 needs clarification regarding survey timing to recognize situations where the current general timing of March 1 to July 15 may not be appropriate and clarifications about conditions under which electrofishing should be generally considered inappropriate. She also shared their perspective on existing difficulties in implementing off-channel habitat.

Karen Terwilleger, Washington Forest Protection Association (WFPA), provided observations related to the water typing field tour on October 27. She said landowners rely on protocol surveys because the defaults are extremely inaccurate and overly protective. She said changes to rules must be based on science and not interpretation of the Forests and Fish Report or the Habitat Conservation Plan.

Kevin Godbout, Weyerhaeuser, asked the Board to be mindful of the legislative intent as described in RCW 76.09.010 when deliberating on the individual topics on the agenda today, specifically Board Manual Section 16, fish use determination, and the Northern spotted owl.

OCTOBER 27 FIELD TOUR RECAP

Stephen Bernath said the purpose of the field tour was to provide the Board with a basic understanding of how the current water typing rule and guidance is implemented today. He said over the next year the Board should have ongoing discussions on different aspects of water typing to be better prepared for decision making in November 2016.

Patrick Capper stated that he appreciated being able to gain “boots on the ground” experience and see what he has been reading in the Board Manual section. He thanked the Board Chair and staff for the opportunity.

Paula Swedeen echoed Capper’s appreciation and said that it makes a big difference to see what it is like in the field. She mentioned some frustration from some members of the public that were not allowed to speak. She suggested that the next field tour allow for comments from public members.

Bob Guenther said he appreciated the opportunity to be out in the field. He said it was an enlightening experience in showing the efforts being made to keep a vibrant timber industry going and realizing the importance of using the manual and working within the constraints of the environmental community. He suggested having a similar tour showing what challenges small forest landowners have.

Brent Davies said she appreciated seeing the challenges and the issues in order to better understand the differences, and how best to work through them. She also suggested a future tour on the eastside.

Dave Herrera said he enjoyed the field tour and it reminded him of when he was a habitat tech doing similar type work. He said the experience will help make those decision easier as the Board moves forward in the next year. He also appreciated hearing the discussion amongst DNR staff on how they conduct their jobs in looking at applications and maps that might help callout areas the application might not have previously identified.

Court Stanley echoed Herrera's statements and agreed with Guenther's suggestion for a small forest landowner field tour.

PUBLIC COMMENT ON BOARD MANUAL SECTION 16 UNSTABLE SLOPES

Ken Miller, WFFA, said with the complexities of the unstable slope issues, they are eager to join DNR to help with any legislative efforts that would help DNR's small landowner office regain staffing to provide technical assistance to small landowners.

Kara Whitaker, Conservation Caucus, requested the Board postpone approval of Board Manual Section 16 and direct DNR to establish caucus appointed qualified expert geologists to further revise the manual to address the inadequacies referenced today.

Paul Kennard, Conservation Caucus, urged the Board to add the shallow rapid coarse screen to Board Manual Section 16. He said it is an easy to use science-based tool and designed to be used by practicing foresters with little or no geology background.

Chris Mendoza, Conservation Caucus, said they do not support approval of Board Manual Section 16 because of inconsistent use of "emphasis" language throughout different Board Manual sections, and asked that the revisions made to the expert panel's language directly addressing content be restored to what the panel had originally envisioned.

Peter Goldman, WFLC, urged the Board to not approve Board Manual Section 16, but instead postpone consideration until the Board's February meeting. During that time, DNR should only permit a panel of neutral geologists to participate in rewriting the Board Manual. He also said the manual is not good enough for training purposes and fails to follow the science and protect the public as best as possible.

Wyatt Golding, WFLC, stated that the Board Manual needs to contain clear instructions and screening tools to be effective. He believes the Board Manual can contain advice including using words such as "should" and "must". He also said avoiding liability when there are mistakes is not a valid legal or policy reason to water down guidance.

Lisa Remlinger, Washington Environmental Council, said she wanted to acknowledge and thank staff for their time spent working through the Board Manual. She asked the Board to postpone approval of the Board Manual and continue working through the issues.

Max Duncan urged the Board to not approve Board Manual Section 16. He asked the Board to remand it back to the group to address the complexity of movement and triggering mechanisms that do not allow for simple predictive models.

Heather Swanson asked the Board to not approve the Board Manual as proposed and approve a manual that is based on science with a cautionary approach rather than a revenue-seeking approach to logging on steep or unstable slopes.

Holly Koon expressed her opinion on what she considers a false dichotomy that is raised during discussions of risk management which is to pit a cautionary approach against economic vitality or viability. She said they are one and the same.

Mark Doumit, WFPA, said they support the approval of Board Manual Section 16. He said an updated version is needed to provide training and outreach to field personnel.

Karen Terwilleger, WFPA, urged the Board to approve the Board Manual to allow training and field implementation to begin.

PUBLIC COMMENT (afternoon)
Vic Musselman, WFFA, spoke in support of WFFA's proposed Westside template. He said that the proposed template poses less risk to all parties than an alternate plan.

Chris Mendoza, Conservation Caucus, shared his concerns on the change in reporting requirements for compliance monitoring which results in a roll-up of information. He indicated that this technique results in an overall compliance rating versus identification of rules that may be problematic. He said he has shared his concerns with Donelle Mahan and Garren Andrews.

Kara Whitaker, Conservation Caucus, spoke about the Northern Spotted Owl Implementation Team (NSOIT) and how slow the process is going. She urged the Board to take action that will help kick start the NSOIT and to support funding for future modeling efforts.

BOARD MANUAL SECTION 16 UNSTABLE SLOPES
Marc Ratcliff, DNR, requested the Board's approval of Board Manual Section 16, *Guidelines for Unstable Slopes and Landforms*. He said that the manual now includes guidance for estimating runout and delivery from potentially unstable landforms and addresses comments raised at the August 2015 meeting by the conservation and landowners caucuses.

He also said that Section 16 provides information to help general practitioners identify when further investigations are needed by a qualified expert. Given this high standard, DNR leaves it up to the qualified expert to determine the likelihood of an adverse environmental impact related to a proposed forest practice.

Marc Engel, DNR, reviewed the rules regarding potential unstable slopes and landforms to better understand the purpose of the proposed Board Manual section. He outlined the necessary analysis required by a qualified expert for certain Forest Practices Applications that have the potential to deliver sediment or debris to a public resource (water) or has the potential to threaten public safety.

He also outlined the Board Manual development process which serves as an advisory technical supplement to the rules.

He said the Board needs to carefully consider all requests brought to the Board to determine which path is appropriate - rule versus Board Manual. He said if a request requires mandatory language requiring specific actions, then the Board should request staff to initiate the rule making process, which in this case would be the preparation of a proposal initiation from the Board to the Adaptive Management Program Administrator.

Engel said the approach in amending Board Manual Section 16 was to assure development of guidance for evaluating potentially unstable slopes and landforms as identified in the Board's rules, not apply a precautionary principle to landslide hazard assessment.

He indicated that several proposed additions were presented and discussed, but not included in the draft. Each of these additions were intended to add clarity to guidance already included in the manual. He said the primary discussions involved the qualified experts and agreement could not be reached over the value of these requested additions because of their focused direction resulted in required work and decisions. Specifically, DNR determined not to include the landslide assessment decision pathway because of its prescriptive approach and the inability of the stakeholder group to amend it as guidance and did not include the shallow rapid coarse screen based on the Tolt Watershed Analysis Mass Wasting Prescription. He said due to insufficient time to discuss and complete, the complex, or composite rotational deep-seated landslides screening material and the coarse screen for deep-seated landslide runout were not incorporated into Section 16.

He concluded by recommending that the proposed Board Manual Section 16 be approved.

Bill little asked if the differences could be worked out. Engel responded it would depend on the time frame needed to reconvene a stakeholder group.

Stephen Bernath asked what the intent is for the Department's review of forest practices on or near unstable slopes. Engel responded to ensure that the analysis is completed and that it addresses the potential for influence on those identified unstable features and to determine if failure occurs, there is no delivery to a public resource or threaten public safety.

Bernath asked if the conservation caucus' concerns outlined in the letter dated November 9, 2015 are Board Manual issues. Engel responded to the seven items listed on page 3 in which several of the concerns would need to go through the adaptive management process in the form of a proposal initiation. A couple of concerns could be reviewed with additional stakeholder meetings.

MOTION: Court Stanley moved the Forest Practices Board approve Board Manual Section 16, Guidelines for Evaluating Potential Unstable Slopes. He further moved the Board allow staff to make minor editorial changes if necessary prior to distribution.

SECONDED: Bob Guenther

Board Discussion:
Paula Swedeen proposed delaying approval until February 2016 and to add some parameters on what is expected for the draft. She also suggested to begin the rule making process for rule identified landforms.

Brent Davies echoed Swedeen's comments and recommended approval at the February 2016 meeting.

Dave Herrera said he does not want to use the Board Manual process to develop a rule. He would like staff to determine what they believe to be rule, and start the rule making process.

Court Stanley said the draft document is good and supports the motion. He said before amending further he would like to wait a year to test the process to see how it is working and provide a revised version in November 2016.

Tom Laurie said he supports the motion and would like work to continue on the manual as well as consider the adaptive management process for recommendations on additional guidance and/or rule making.

Bill Little said he supports the motion.

Bob Guenther also supports approving the draft today and agrees with Stanley to test it for a year.

Patrick Capper said he defers to staff's recommendation to move forward.

Heather Ballash said she agrees with Laurie and does not want to lose the momentum and would like work to continue on the manual.

Joe Stohr said he supports continuing the discussions to seek consensus on rule versus guidance.

Bernath asked if there are any limitations for staff on continuing to work on the Board Manual and provide training. Engel responded that the best approach would be to approve the draft today for training purposes and identify potential additions to the Board Manual.

Laurie proposed approving the draft today, identify a short term work plan on some specific items to incorporate into the manual and refer items to the adaptive management program.

Board discussion continued on whether to amend the motion.

Court Stanley supported by Bob Guenther amended his motion to include:

> He further moved that items (conservation caucus comment letter dated November 9, 2015) near resolution will be addressed by a Board Manual committee by the February 2016 board meeting. The committee will be convened by DNR staff to only include qualified experts.
>
> He further moved that items that are not near resolution and may need either more science or rule making will be brought back to the Board at the February 2016 Board meeting as a proposal initiation with a recommendation to the Adaptive Management Program Administrator.
>
> Stanley finally moved that the DNR report back to the Board for review at the November 2016 meeting.

Board Discussion:
Paula Swedeen suggested that discussion occur between staff and all the caucuses to determine which items need to go through the adaptive management program.

Joe Stohr said he may not support the motion because he is concerned that there will not be pressure on the system to get the easier fixes done.

Marc Engel said that a meeting could be held soon between DNR, conservation caucus and the landowner caucus to discuss all of the issues and determine which can be pursued within this short amount of time.

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON MASTER PROJECT SCHEDULE
None.

2015-2017 BIENNIAL MASTER PROJECT SCHEDULE CHECK-IN
Hans Berge, DNR, requested the Board's approval to reallocate unspent funds to six prioritized projects. He said the Adaptive Management Program received $5.9 million general fund state dollars for the biennium and there are strict limits on spending these funds. He said there is no flexibility to carry funds over even if there is a positive variance. He reviewed the six projects:

1. CMER access to scientific literature databases. Cost: $34,275.
2. Wetland mapping tool. Cost: $80,000.
3. Eastside modeling evaluation project. Cost: $65,000
4. Personal service agreements for up to $10,000 for a technical editor.
5. Personal services agreement for up to $10,000 for a statistician.
6. Equipment purchases for the Eastern Washington Type N Riparian Effectiveness Prescription and Roads BMP Effectiveness studies.

MOTION: Tom Laurie the Forest Practices Board approve the reallocation of unspent funds to the six prioritized projects identified in Hans Berge's memo dated November 9, 2015.

SECONDED: Heather Ballash

ACTION: Motion passed unanimously.

Due to time constraints the following were moved to the February 2016 meeting.

- Compliance Monitoring 2014 Interim Report
- TFW Policy Committee's Type F Matrix Update
- Non-Point Source Plan Update
- Selection Process for Committee Co-Chairs
  - TFW Policy Committee - Adrian Miller, Chair
  - CMER – Todd Baldwin and Doug Hooks, Co-chairs
  - TFW Cultural Resources Roundtable – Jeffrey Thomas and Karen Terwilleger, Co-chairs
- Northern Spotted Owl Status Review Update – Kevin Kalasz, Washington Department of Fish and Wildlife (WDFW)
- Staff Reports
  A. Adaptive Management - Hans Berge, DNR
  B. Board Manual Development - Marc Ratcliff, DNR
  C. Compliance Monitoring – Garren Andrews, DNR
  D. Small Forest Landowner Advisory Committee and Small Forest Landowner Office -Tami Miketa, DNR
  E. TFW Cultural Resources Roundtable - Jeffrey Thomas and Karen Terwilleger, Co-chairs
  F. Upland Wildlife Update - Terry Jackson, WDFW

PUBLIC COMMENT ON PETITION FOR RULE MAKING
None.

WESTERN GRAY SQUIRREL PETITION FOR RULE MAKING
Marc Engel, DNR, reviewed the petition for rule making process with the Board.

Terry Jackson, WDFW provided an update on the periodic status review of the Western gray squirrel.

Engel said that DNR and WDFW staff recommend the Board deny the petition and revisit next steps at their May 2016 meeting, at which time WDFW's status review will be completed.

MOTION: Joe Stohr moved that the Forest Practices Board deny the rule petition pertaining to the Western Gray Squirrel at this time. He further moved the Board revisit the status and possible next steps for protection of the Western Gray Squirrel at their May 2016 meeting when WDFW's periodic status review will be final and the Western Gray Squirrel Annual Report to the Board will be presented.

SECONDED: Bill Little

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON BOARD'S 2016 WORK PLAN
Ken Miller, WFFA, invited the Board to have a field visit on his property to better visualize issues around the alternate harvest prescriptions for small forest landowners. He asked the Board to add it to their 2016 Work Plan.

Peter Goldman, WFLC, asked the Board to develop a measured response to protecting the Northern spotted owl. He also suggested a future discussion on whether the rules governing public safety should go through the adaptive management program.

2016 WORK PLANNING
Marc Engel, DNR, reviewed the draft 2016 Work Plan with the Board.

As a result of today's actions, the following was added to the Work Plan:
- Board Manual Section 16
- Proposal Initiation to review Unstable Slopes rules and guidance due February

MOTION: Brent Davies moved the Forest Practices Board approve the 2016 Proposed Work Plan as amended today.

SECONDED: Bill Little

ACTION: Motion passed unanimously. (Herrera not available for vote.)

Meeting adjourned at 3:50 p.m.